

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MR. AND MRS. GREGORY SWECKER,  Complainants,  vs.  MIDLAND POWER COOPERATIVE,  Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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**ORDER DENYING MOTION TO DETERMINE RATES  
AND PROVIDE BACKUP POWER**

(Issued September 9, 1999)

On August 23, 1999, Mr. Greg Swecker filed a "Motion to Determine Rates and To Provide Backup Power to QF Facility." On September 1, 1999, Midland Power Cooperative (Midland) filed a resistance to the motion. On September 7, 1999, Central Iowa Power Cooperative (CIPCO) and the Iowa Association of Electric Cooperatives (IAEC) filed a response to the motion.

In his motion, Mr. Swecker cites IOWA CODE § 476.43 (1999) as authority for the motion. He asserts that upon application, the Utilities Board (Board) is to establish just and economically reasonable rates for electricity purchased from alternate energy production facilities. He further asserts that a wind turbine is an alternate energy production facility, and that Midland is an electric utility. He asserts

that upon application, the Board shall require the utility to provide backup power to the alternate energy production facility on a nondiscriminatory basis and at just and reasonable rates pursuant to IOWA CODE § 476.43(1)(b) (1999). He asserts that he and Mrs. Swecker have been attempting to obtain electric service since April 1998 from Midland without success, and that they have been damaged by the delay. He therefore asks the Board to immediately implement IOWA CODE § 476.43 and enforce the Board's net billing regulations.

IOWA CODE §§ 476.41-45 (1999) apply only to rate-regulated electric utilities. Iowa Power & Light Company v. Iowa State Commerce Commission, 410 N.W.2d 236 (Iowa 1987). Midland Power Cooperative is a rural electric cooperative, and thus is not a rate-regulated utility. IOWA CODE § 476.1A (1999). Therefore, IOWA CODE § 476.43 (1999) does not apply to Midland, and cannot be used as the basis for setting rates in this case, or for ordering Midland to perform as requested in Mr. Swecker's motion.

Mr. Swecker also asks the Board to enforce its net billing regulations against Midland. The Board's net billing rule is contained at 199 Iowa Admin. Code § 15.11(5). This rule applies only to sales and purchases of electricity between qualifying alternate energy production facilities and rate-regulated utilities. 199 Iowa Admin. Code § 15.2(1)(c). Therefore, the rule does not apply to Midland, and cannot be enforced against it.

The IAEC and CIPCO request that costs of this motion be assessed against Mr. Swecker, and that the Board issue "such other and appropriate orders as the Board deems appropriate in the circumstances." The IAEC and CIPCO do not provide any rationale or legal citation for this request. Mr. Swecker is unrepresented by legal counsel. There is no justification for imposing costs against him, and it would be highly inappropriate to do so. In addition, there is no other appropriate order which should issue.

**IT IS THEREFORE ORDERED:**

1. Mr. Swecker's motion to set rates, provide backup power, and enforce the net billing rule is hereby denied.
2. CIPCO and the IAEC's request to impose costs of this motion against Mr. Swecker or to issue such other order as deemed appropriate is hereby denied.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

Dated at Des Moines, Iowa this 9<sup>th</sup> day of September, 1999.